IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO. 25510 OF 2007

Dated : December 3, 2007

Between:

M/s. Quality Care India Limited,
D.No. 5-4-199, M.JU. Road, Hyderabad – 38,
Rep. By its Director Dr. N.Krishna Reddy

Petitioner

AND

The Commercial Tax Officer,
M.J. Market Circle, Hyderabad and another

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G.ROHINI

W.P. NOS. 25510 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of Mandamus to declare the action of the second respondent in refusing to grant stay by order

dated 24.11.2007 for the assessment year 2006-2007 under the A.P. Tax on Luxuries Act, 1987 as illegal and arbitrary and to consequently restrain the first respondent from recovering the disputed tax of Rs.39,22,881/- pursuant to the notice dated 27.11.2007 pending disposal of the Appeal, the petitioner filed these writ petition.

The petitioner is a Limited Company incorporated under the Indian Companies Act and is a registered dealer and assessee on the rolls of the first respondent under the Andhra Pradesh General Sales Tax Act, C.S.T. Act, VAT Act, 2005 and A.P. Tax on Luxuries Act, 1987 and is running Multi-Speciality Hospital provided various medical services of International standards equipped with medical doctors, experts in particular branch of medicine. For the assessment year 2006-2007 the petitioner paid tax under the provisions of A.P. Tax on Luxuries Act, 1987, on the accommodation charges. While so, the first respondent, pursuant to the inspection conducted by the Regional Vigilance and Enforcement Officer, Hyderabad, issued show cause notice dated 7.12.2006 proposing to assess the petitioner on a turnover of Rs.4,48,31,536/- for the assessment year 2006-2007, to which the petitioner filed detailed objections. The first respondent, however, did not agree with the contentions of the petitioner and confirmed the levy through his provisional assessment order Dated 7.6.2007 for the assessment year 2006-2007.

Aggrieved by the same, the petitioner carried the matter in Appeal being Appeal No.A/87/07-08 before the second respondent on 20.7.2007. Along with the Appeal, the petitioner also filed stay petition, which was rejected by the second respondent vide proceedings dated 24.11.2007. The said rejection proceedings passed by the second respondent along with the notice of the first respondent were served on the petitioner on 27.11.2007 directing the petitioner to remit the entire disputed tax immediately, else coercive steps would be initiated for recovery thereof.

On 29.11.2007, when writ petition had come up for admission, inasmuch as the learned Special Standing Counsel requested time to get instructions, we directed the respondents not to take coercive steps for recovery of the demanded amount, till 3.12.2007.

The learned Special Standing Counsel, on instructions, now submits that the appeal preferred by the petitioner was partly heard by the second respondent and the petitioner herein was directed to submit certain books of accounts and other material and, as such, the appeal could not be disposed of. While it is the submission of the learned counsel for the petitioner that pursuant to the rejection of stay, sought for in the appeal by the petitioner on 24.11.2007, the impugned notice dated 27.11.2007 issued by the first respondent along with the order rejecting stay,

was served on the petitioner on the same day, therefore, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Special Standing Counsel for the respondents.

Even though, learned counsel for the petitioner tried to argue on merits with regard to the imposition of tax under the provisions of A.P. Tax on Luxuries Act, 1987, we are of the considered opinion that since the appeal is partly heard by the second respondent, suffice it to direct the Appellate Authority – Appellate Deputy Commissioner to conclude hearing of the appeal, which is admittedly part heard before it, and dispose of the same on merits in accordance with law or before 31.12.2007. Till such time, no coercive steps shall be taken pursuant to the impugned notice.

With these directions, the writ petition is disposed of at the stage of admission. No order as to costs.

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T.MEENA KUMARI, J.

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G.ROHINI, J.

December 3, 2007
Copy in (2) days
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